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E-filing

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

JCS

03 - 1397

ARB

CSI CAPITAL MANAGEMENT, INC., and	)	Case No. _____
LELAND FAUST,	)	
	)	<b>COMPLAINT FOR SLANDER (Cal. Civil</b>
Plaintiffs,	)	<b>Code §47), UNLAWFUL BUSINESS</b>
vs.	)	<b>PRACTICE (Cal. Bus. &amp; Prof. Code</b>
	)	<b>§17200) AND INTERFERENCE WITH</b>
PRIM CAPITAL CORPORATION, PRIM	)	<b>PROSPECTIVE ECONOMIC</b>
ADVISORS, INC., and DOES 1 through 25.	)	<b>ADVANTAGES</b>
	)	
Defendants.	)	<b>DEMAND FOR JURY TRIAL</b>
	)	

**PLAINTIFFS**

Plaintiffs demanding a jury trial allege:

1. Leland Faust (hereinafter "Faust") is a highly-respected, nationally known and recognized principal of CSI Capital Management, Inc. Faust attended the University of California, Berkeley, where he graduated Phi Beta Kappa and with Honors in economics. He next attended Harvard Law School where he graduated cum laude and taught taxation. Faust

1 next pursued private practice and became a partner in Taylor & Faust, recognized as one of the  
2 premier tax firms in San Francisco. Faust is a resident of San Francisco, California.

3 2. CSI Capital Management, Inc., is a financial services company and is nationally  
4 recognized as a leading provider of comprehensive and innovative financial services to  
5 professional athletes, entertainers and other high net worth clients. CSI Capital Management  
6 Inc., was incorporated under the laws of the State of California in 1978, as Career Sports  
7 International and subsequently changed its name to CSI Capital Management (hereinafter "CSI")  
8 with its principal place of business in San Francisco, California.

9  
10 **DEFENDANTS**

11 3. Prim Capital Corporation is an Ohio corporation. Prim Advisors, Inc., is an Ohio  
12 corporation and a SEC registered investment advisor, that is one of five operating units of Prim  
13 Capital Corporation. Prim Capital Corporation also has operating units: Prim Securities, Inc., a  
14 brokerage firm, Prim Agency, Incorporated, an insurance agency and Prim Real Estate, a real  
15 estate brokerage, and Prim Financial Services, Incorporated, a full-service accounting, financial  
16 planning and financial management firm. Prim Capital and Prim Advisors (referred to  
17 collectively as "Prim") maintain their principal place of business in Ohio. Prim conducts its  
18 business nationwide and has maintained facilities within California.

19  
20 **JURISDICTION AND VENUE**

21 4. This action is between Plaintiffs, a California resident and California corporation  
22 with its principal place of business in San Francisco, California, and Defendants, two Ohio  
23 corporations with their principal place of business in Ohio. The amount in controversy exceeds  
24 \$75,000, and therefore, this Court has diversity jurisdiction pursuant to 28 U.S.C. §1332. Venue  
25 is proper in this district pursuant to 28 U.S.C. §1391(c) because defendants are foreign  
26 corporations subject to in personum jurisdiction in this district.

**FACTS**

1  
2 5. In the 1970's, the media reported numerous stories of professional athletes  
3 suffering large financial losses due to imprudent investing and abuse by their financial advisors  
4 and the consultants. Faust determined to bring a new service to the financial world of  
5 professional athletes: honest, serious, and competent investment advice and tax planning.

6 6. In 1978, Faust started Career Sports International (hereinafter "CSI") the  
7 precursor to CSI Capital Management, Inc., to provide legitimate financial management and  
8 advice to professional athletes.

9 7. By the mid-1980's Faust had developed a national reputation for providing  
10 excellent financial management services to professional athletes. Additionally, during the  
11 1980's, Faust and CSI rescued several high profile athletes from financial ruin. Faust and CSI's  
12 successes in providing honest competent financial services to professional athletes and their  
13 successes in "rescuing" clients from financial disaster resulted in Faust and CSI being identified  
14 nationally as the leading provider of honest competent financial advice to the sports industry.  
15 Faust and CSI were the subject of numerous complimentary media articles. Faust was accurately  
16 portrayed as a financial services provider of the highest integrity who provided unsurpassed  
17 services to his clients and who, by looking after his clients' best interest, was the antidote to the  
18 scandalous experiences many athletes had with financial services providers.

19 8. CSI, as a direct result of its good performance and national reputation, grew in the  
20 1990's to servicing over 150 professional athlete clients. Additionally, Faust has been consulted  
21 by sport institutions like the Major League Baseball Players Association and the National  
22 Football League Players Association regarding financial matters. By 1994, Faust was recognized  
23 by the Sporting News as one of the 100 most powerful people in sports.

24 9. Part of CSI's services to its clients is directing the clients' investment into a  
25 diversified group of publicly traded securities. As CSI's client base grew, CSI realized that an  
26 organized structure of the clients' equities would allow economies of scale which would inure to  
27 its clients' benefit. CSI acted on its realization by organizing CSI Equity Fund in 1997, a mutual  
28 fund. Some CSI clients have invested in the CSI Equity Fund. Like any mutual fund, CSI

1 Equity Fund has fee provisions built into its structure. CSI, to insure that the advantages of the  
2 economies of scale inure to its clients' benefit, deducts the management fees it receives from the  
3 mutual fund from the fees the clients pay directly to CSI for its management services.

4 10. Consistent with CSI's history of excellent results from investments, CSI Equity  
5 Fund has been hugely successful, ranking in the top 10% of mutual funds in its category for its  
6 investment performance over the last five years, and currently carries a five star rating from  
7 Morningstar, Inc., mutual fund rating service. Additionally, as a result of careful tax strategies  
8 followed by Faust and CSI, investors in CSI Equity Fund have not been taxed on much of the  
9 gains they enjoy from CSI Equity Fund. The success of CSI Equity Fund has added to the  
10 favorable reputation of CSI and Faust and resulted in national acclamation in such prestigious  
11 media as The New York Times, Barrons and The Wall Street Transcript, and in 2002 Barrons  
12 listed Faust as one of the top 100 mutual fund managers in the United States.

13 11. In the financial world and the sports world Faust and CSI's reputations are  
14 virtually interchangeable.

#### 15 Prim's Plan

16 12. Plaintiffs are informed and believe and thereon allege that Prim at some time prior  
17 to June 2002, the exact date of which is unknown to plaintiffs, developed a strategy to solicit  
18 professional basketball players as clients for its investment advisory services and the services  
19 provided by the other operating divisions of Prim Capital, Inc. Prim's marketing plan was to  
20 provide "free audits" of player's financial affairs in which Prim would critique the performance  
21 and fees of the player's current advisors and suggest techniques for improving the player's  
22 financial performance. Prim's plan called for Prim to provide the "audit" at no charge. Plaintiffs  
23 are informed and believe and thereon allege that Prim expected to make money only if the  
24 audited player chose to retain Prim's services after the audit.

25 13. Prim's marketing plan allowed Prim access to the player, allowed Prim to  
26 demonstrate its purported expertise to the player and ingratiate itself with the player because  
27 Prim provided the audit for free.

15. Sometime before June 2002, Hunter apparently agreed to assist Prim with access to the NBA players by organizing team meetings of each NBA franchises team where Prim was allowed to present the availability of its audit services to the players. Plaintiffs do not know the exact time or the circumstances under which Prim and Hunter came to their agreement.

16. Commencing in 2002 and continuing to the filing of this Complaint, Prim has pursued its plan of marketing itself via its free audit program, has presented the idea to all NBA players and is auditing players' financial portfolios.

17. Pursuant to its marketing program, Prim has been able to audit the financial circumstances of several NBA players including CSI clients. In conjunction with its marketing plan, Prim has acted fraudulently, by failing to disclose material facts, making false statements and stating opinions in context to be understood as statements of fact.

18. Plaintiffs are informed and believe and thereon allege that Prim has failed to disclose either to Hunter or to the NBA players it solicits for audits the following facts that either Hunter or the players would certainly have wanted to know before placing their trust and confidence in Prim:

- ## COMPLAINT

- 1 d. Anthony Delfre, an owner and Vice President of Prim, and one of the primary  
2 auditors, has been sued for misappropriation of confidential financial information  
3 in order to obtain new clients after he left Merrill Lynch, Pierce, Fenner & Smith  
4 Inc., brokerage firm and he was allowed to resign from Prudential Securities, Inc.,  
5 brokerage for making unauthorized payments to third parties;
- 6 e. Joseph Lombardo, President and CEO of Prim Capital Corporation, and an  
7 indirect owner of Prim Advisors, has several judgments against him in his home  
8 state of Ohio;
- 9 f. That Prim Capital Corp. has several judgments outstanding against it in Ohio;
- 10 g. That Prim has a conflict of interest in purporting to provide objective audits for  
11 players because of Prim's goal of obtaining the players as clients; and
- 12 h. That Prim as recently as December 2001, was found liable in an NASD  
13 proceeding alleging fraudulent activities, resulting in an award of \$193,000  
14 against Prim Securities, Inc.

15 19. In addition to failing to disclose material facts Prim representatives have made  
16 numerous false statements to the public or to CSI clients in March 2003:

- 17 a. Prim representative, Anthony Delfre told Ty Eisley, a CSI client, that she and her  
18 husband had been "overcharged" by CSI for its services. Delfre's statement is  
19 readily understood to mean that CSI and Faust were improperly charging  
20 excessive fees. Delfre's statement effectively charged CSI and Faust with  
21 dishonesty;
- 22 b. Prim representative Anthony Delfre told Ms. Eisley that CSI's representations  
23 regarding tax savings were untrue; that there was "no possible way they saved on  
24 taxes"; and that CSI's representations of tax savings simply were "not the case."  
25 Delfre's statements are readily understood to mean either that CSI and Faust lied  
26 to Ms. Eisley regarding tax savings, or were so incompetent that CSI did not  
27 recognize that the asserted tax savings did not exist;
- 28



- 1 c. Prim representative Anthony Delfre told Ms. Eisley that “CSI does not want to  
2 cooperate with the audit.” Delfre’s statement is readily understood to mean that  
3 CSI and Faust refuse to follow their clients’ directions and are reluctant to allow  
4 Prim to review documents because CSI and Faust need to hide the truth;
- 5 d. Prim representative Joseph Lombardo is reported in industry trade paper, *Street &*  
6 *Smith’s Sports Business Journal*, as saying players are invested in mutual funds  
7 owned by the players’ financial advisors, in a context communicating that such  
8 investments are improper, unethical and may be illegal. Lombardo’s statements  
9 are readily recognized as referring to CSI and Faust because CSI and Faust are  
10 well known to have directed clients investments into the highly successful CSI  
11 Equity mutual fund;
- 12 e. Prim representative, Joseph Lombardo is also reported in the *Street & Smith’s*  
13 article, that players are paying advisors as much as 1.5 per cent of their pretax  
14 salaries when the industry standard is to pay an hourly rate. Lombardo’s  
15 comment in the context of the entire article communicates that advisors who did  
16 not charge by the hour are not following industry standard and are charging  
17 exorbitant fees. CSI does not charge its clients on an hourly basis;
- 18 f. Lombardo is quoted in the *Street & Smith’s* article as stating “We [Prim] do not  
19 manage their [players] money and we do not sell them any [financial] products at  
20 all.” In the context of the Street & Smith’s article this statement communicates  
21 that Lombardo’s opinions and statements should be accepted as credible and true  
22 because he is an objective outside observer of the matters upon which he  
23 commented. Lombardo’s statement is false, in that Prim has been retained by  
24 players, including one CSI client, who left CSI to go to Prim.
- 25 20. Each of the statements made by Prim representatives as alleged in Paragraph 19 is  
26 false.

**FIRST CAUSE OF ACTION**  
**(CSI's Claim for Slander Against All Defendants)**

21. Plaintiff CSI by this reference incorporates each and every allegation of Paragraphs 1 through 20, inclusive of this Complaint.

22. Each of the statements by defendants as alleged with particularity in Paragraph 19 is false and defamatory because the statements tend to impugn CSI's integrity and competence which naturally tends to injure CSI in its business as a fiduciary and financial manager.

23. As a proximate and direct result of defendants' defamatory statements CSI has been injured in its business.

24. Plaintiff CSI is informed and believes and thereon alleges that defendants made the alleged false defamatory statements knowingly, intentionally, fraudulently, and maliciously in order to injure CSI in its business.

25. As a result of defendants' defamatory statements, CSI has been injured in an amount to be proved at trial.

26. Defendants' fraudulent and malicious activities justify and award of exemplary and punitive damages in an amount to be proved at trial.

**SECOND CAUSE OF ACTION**  
**(Faust's Claim for Slander Against All Defendants)**

27. Plaintiff Faust by this reference incorporates each and every allegation of Paragraphs 1 through 20, inclusive of this Complaint.

28. Each and every of the statements by defendants as alleged with particularity in Paragraph 19 is false.

29. Each of the statements by defendants as alleged with particularity in Paragraph 19 is false and defamatory because the statements tend to impugn Faust's integrity and competence which naturally tends to injure Faust in his business as a fiduciary and financial manager, and therefore in violation of California Civil Code Section 47.



1           30.     As a proximate and direct result of defendants' defamatory statements Faust has  
2 been injured in his business.

3           31.     Plaintiff Faust is informed and believes and thereon alleges that defendants made  
4 the alleged false defamatory statements knowingly, intentionally, fraudulently, and maliciously  
5 in order to injure Faust in his business.

6           32.     As a result of defendants' defamatory statements, Faust has been injured in an  
7 amount to be proved at trial.

8           33.     Defendants' fraudulent and malicious activities justify an award of exemplary and  
9 punitive damages in an amount to be proved at trial.

10                                   **THIRD CAUSE OF ACTION**  
11                                   **(CSI's Claims Against All Defendants for**  
12                                   **Interference with Prospective Economic Advantages)**

13           34.     Plaintiff CSI by this reference incorporates each and every allegation of  
14 Paragraphs 1 through 33, inclusive of this Complaint.

15           35.     Plaintiff CSI's business and professional athletes are predicated on its reputation  
16 for integrity and excellent performance.

17           36.     Plaintiff CSI is informed and believes and thereon alleges that it has lost one  
18 client as a proximate and actual result of defendants' wrongful activities, and that plaintiff is  
19 losing additional potential clients due to the defendants' unlawful activities as alleged herein.

20           37.     As a proximate and direct result of defendants' unlawful interference with CSI's  
21 legitimate business opportunities by its fraudulent and defamatory statements CSI has been  
22 injured in its business.

23           38.     As a result of defendants' unlawful interference with CSI's business  
24 opportunities, CSI has been injured in an amount to be proved at trial.

25           39.     Plaintiff CSI cannot know the full extend of damages it has suffered and will  
26 suffer due to defendants' wrongful activity and damages do not afford plaintiff adequate relief  
27 and defendants should be restrained from any further wrongful interference with plaintiffs'  
28 business.

1           40.     Plaintiff CSI is informed and believes and thereon alleges that defendants have  
2 interfered with CSI's business opportunities knowingly, intentionally, fraudulently, and  
3 maliciously in order to injure CSI in its business.

4           41.     Defendants' fraudulent and malicious activities justify and award of exemplary  
5 and punitive damages in an amount to be proved at trial.

6                                   **FOURTH CAUSE OF ACTION**  
7                                   **(CSI's Claims Against All Defendants for**  
8                                   **Violating B&P §1700)**

9           42.     Plaintiff CSI by this reference incorporates each and every allegation of  
10 Paragraphs 1 through 41, inclusive of this Complaint.

11           43.     Plaintiff CSI's business and professional athletes are predicated on its reputation  
12 for integrity and excellent performance.

13           44.     Defendants' unlawful conduct as alleged herein, constitutes unlawful business  
14 practice in violation of B&P Code Section 17200.

15           45.     As a proximate and direct result of defendants' defamatory statements CSI has  
16 been injured in its business and the public has been mislead.

17                                   **PRAYER FOR RELIEF**

18           WHEREFORE, Plaintiffs pray for the following relief:

19           For Plaintiff CSI:

- 20           1)     General and special damages according to proof;
- 21           2)     Exemplary and punitive damages according to proof;
- 22           3)     An order enjoining defendants and each of them from any further unlawful  
23 conduct as proved at trial;
- 24           4)     Attorney fees and costs;
- 25           5)     And such other and further relief as the Court deems appropriate.
- 26
- 27
- 28

For plaintiff Leland Faust:

- 1) General and special damages according to proof;
- 2) Exemplary and punitive damages according to proof;
- 3) Attorney fees and costs;
- 4) And such other and further relief as the Court deems appropriate.

DATED: April 1, 2003

LAW OFFICES OF PHILIP SCOTT RYAN  
KING & KELLEHER, LLP

By   
Edward Vincent King, Jr.

Attorneys for Plaintiffs  
CSI CAPITAL MANAGEMENT, INC. and  
LELAND FAUST

**DEMAND FOR JURY TRIAL**

Plaintiffs CSI Capital Management, Inc., and Leland Faust hereby demand trial by jury.

DATED: April 1, 2003

LAW OFFICES OF PHILIP SCOTT RYAN  
KING & KELLEHER, LLP

By   
Edward Vincent King, Jr.

Attorneys for Plaintiffs  
CSI CAPITAL MANAGEMENT, INC. and  
LELAND FAUST